20 December 2012

Legal advice on matters regarding Switzerland as the potential domicile for the Global Legal Entity Identifier (LEI) Foundation (or similar entity) operating the Central Operating Unit (COU)[1]

The FSB Secretariat has issued a request for information from legal professionals, and experts in Swiss law, to provide a legal opinion on a number of questions regarding Switzerland as the domicile for the Global LEI Foundation (or similar entity such as an Association) operating the Central Operating Unit of the Global LEI System.

On 8 June 2012, the FSB published 'A Global Legal Entity Identifier for Financial Markets'[2] report (LEI report), which set out global LEI system High Level Principles and 35 recommendations for the development of a global unique identification system for parties to financial transactions. The G20 endorsed the recommendations at the Los Cabos Summit and asked the FSB to take forward the work to implement the system.

The FSB established a working group (the LEI Implementation Group) to this end[3]. A key objective of the group, as set out in recommendation 15 of the LEI report, is to develop and implement a detailed plan for the formation of the proposed Central Operating Unit (COU) that supports the federated nature of the LEI system via the establishment of a not-for-profit Global LEI Foundation (or equivalent such as an Association). The latter will be directed by a Board of Directors who would operate under the supervision of a Regulatory Oversight Committee (ROC) which has ultimate authority over the system. The mission, objectives and responsibilities of the ROC are set out in the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier (LEI) System which was published on 5 November 2012.[4]

Under the supervision of the ROC, the Global LEI Foundation (or Association) operating the COU will constitute the pivotal operational arm of the LEI system. It will have responsibility for ensuring the application of uniform operational standards and protocols around the world and support the maintenance of a 'logically' centralised database of identifiers and corresponding reference data. The Global LEI Foundation operating the COU is anticipated to be the contracting and operational body of the system. It will be composed of private sector participants from different sectors and geographical locations and will have legal personality.

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[1] Subject to the decision on the domicile that will be taken by the ROC at the end of January, a second component of the work will be to support the preparation of the legal documents to establish the Foundation/Association.

[2] Available at http://www.financialstabilityboard.org/publications/r_120608.pdf

[3] The FSB LEI Implementation Group is comprised of experts from the global regulatory community. To foster strong co-ordination between the public and private sectors in developing and implementing a global LEI system, the FSB has established a global Private Sector Preparatory Group (PSPG) comprising over 200 members from some 25 countries. The PSPG is working closely with the Implementation Group on three workstreams: governance and legal issues, operations, and hierarchy and reference data.

[4] Available at http://www.financialstabilityboard.org/publications/r_121105c.pdf.

Setting up the not-for profit LEI Foundation (or similar entity such as an Association) requires informed decisions on its legal structure and domicile. In regard to these questions, the FSB LEI IG has benefited from pro bono advice received from a number of law firms in the summer[5], and from the assistance of experts from the FSB LEI PSPG. Following analysis by the IG and PSPG of potential locations for the legal home for the Foundation (or equivalent), the FSB is seeking a more detailed legal assessment of Switzerland. Two important considerations for the deeper assessment are: first, that the legal home for the Foundation (or Association) should support the governance structure described in the ROC Charter to ensure the protection of the broad public interest; and second, that it should allow different national locations for the legal home of the Foundation and its associated operational activities. Interest is sought from Swiss legal experts in providing the qualified legal opinion. Please could interested parties contact Nigel Jenkinson and Irina Leonova in the FSB Secretariat for additional information (nigel.jenkinson@bis.org; irina.leonova@bis.org).

The legal opinion will need to be provided to a tight timeline of 14 January 2013. The deadline is determined by the first meeting of the LEI Regulatory Oversight Committee to be held at the end of January 2013 where the final decision on the location of the Global LEI Foundation (or similar entity) will be made. Subject to a decision by the ROC in late January to choose Switzerland as the legal domicile for the Global LEI Foundation/Association, a second component of the call for legal support would be to seek assistance with the drafting of the key legal documents to establish the Foundation/Association in a timely manner.

Should the ROC decide to pursue an alternative domicile to Switzerland, another legal assessment will need to take place for an alternative location. Any questions should be directed to Nigel Jenkinson and Irina Leonova (nigel.jenkinson@bis.org; irina.leonova@bis.org).

[5] Available at http://www.financialstabilityboard.org/publications/r_120810.pdf.